handwriting. His order was apparently for the purpose of assisting the defence just in case the handwriting expert could give evidence which could create reasonable doubt on the prosecution case. The records at page 53 clearly show that the learned President had already made a finding on the prosecution case before asking the defence to call the expert. In fact it is also recorded at that page that the defence *also* suggested that the expert be called. Defence had in fact been called by the learned President and the applicant was given the three alternatives as recorded at page 53 of the appeal records and it was unnecessary for the learned President to again give the three alternatives to the accused at page 54 of the records after the expert was called. This sequence can clearly be seen at pages 49, 50 and 53 of the records.

Question (4) follows logically in sequence to questions (1) and (2) and this question was neither specifically raised as a ground in the petition of appeal nor argued at all during the hearing of appeal; this question is therefore not a fit and proper one to be referred under section 66 of the Courts of Judicature Act, 1964. At the hearing of the application counsel refers to the word "shall" appearing in the second line of sub-paragraph (j) of section 173 of the Criminal Procedure Code and it is his contention that it is mandatory for the accused to give evidence first in the witness box before any other defence witness is called to testify. Suffice to say that there is no merit in this argument as that paragraph merely sets out the procedure for the accused to state his defence and the requirement does not go beyond that the court shall ask the accused to state his defence. The procedure contended by counsel for the applicant is neither supported by sub-paragraph (j) expressly nor by necessary implication.

With regard to question (3) the finding of the learned President was recorded at page 60 of the records. He made the finding that the defence had failed to cast reasonable doubt on the prosecution story. It is also clear from the records that the matter referred to in question (3) was not the reason for the learned President's finding of guilt. He considered the proven facts and circumstances. From what I can understand from the records what the learned President was asking for was for some explanation as to how the accused dealt with the payment of wages of labourers to explain that the money was in fact paid to the workers if that was the case of the defence because the defence of the accused would seem to be a complete denial. This question cannot be a proper question for reference in the context of the specific finding made by the learned President that the money the subject of the charge was received by the applicant and not merely alleged to have been received.

Although the substance in question (1) was referred to specifically as a ground in the petition of appeal, this question was not material in the decision of the appeal having regard to the evidence recorded by the learned President. The conviction and sentence of the appellant were confirmed because of specific findings by the learned President and they were neither wrong in law nor against the weight of evidence. In my view questions to be referred under section 66(1) of the Courts of Judicature Act, 1964 should not only be questions referred to as grounds in the petition of appeal and pursued in the appeal they must also be questions which are material to the determination of the appeal. Surely it is not the intention of section 66 of the Act to enable a party who loses an appeal to resort to that section and to bring in questions which were neither fully argued at the appeal nor material to the determination of the appeal. In fact section 66(1) is very clear on this where it provides that the High Court may "reserve for the decision of the Federal Court any question of law of public interest which has arisen in the course of the appeal and the determination of which by the judge has affected the event of the appeal."

For these reasons the application is dismissed.

Application dismissed.

Solicitors: *J. Nadchatiram & Co.*

LAW YEE WAH & ANOR. v. POH KOH & SONS REALTY SDN. BHD.

[A.C.J. (Wan Suleiman J.) April 6, 1974]
[Seremban — Civil Appeal No. 8 of 1972]

Practice and Procedure — Appeal — Notice of appeal — Application for extension of time for service — Subordinate Courts Rules, 1950 — Absence of guidance therein — Interpretation Act, 1967, s. 54(2).

Service of a notice of appeal some 25 days after the last day for filing such notice of appeal in court is sufficiently speedy and an application for extension of time for such service is unnecessary.

Cases referred to:-

(1) *Liew Chee Tat* v. *Lok Moon & Ors.* [1972] 2 M.L.J. 29.

(2) *New India Assurance Co. Ltd.* v. *Karam Singh,* Muar Civil Appeal No. 1 of 1970 (unreported).

NOTICE OF MOTION.

J. Nadchatiram for the appellants.

Seah Choon Chye for the respondent.

Wan Suleiman J.: This is an application by way of Notice of Motion filed by the appellants in Seremban Civil Appeal No. 8 of 1972 for an extension of time for service of the Notice of Appeal upon the respondent.

The decision of the Magistrate, Seremban in Magistrate's Court Civil Suit No. 153 of 1971 was pronounced on 29th July, 1972, and Notice of Appeal was filed on the same day, but was not served on respondent's solicitor until 7th September, 1972 when it was accepted under protest, in view of the decision of Sharma J. in *Liew Chee Tat* v. *Lok Moon & Ors.*[1]

In that appeal, Sharma J. referred to an unreported decision of his (Muar Civil Appeal No. 1 of 1970: *The New India Assurance Co. Ltd.* v. *Karam Singh*[2]) in which his Lordship had held that though the notice of appeal was served on the respondents more than 14 days after it had been filed (apparently 14 days after the last day for filing it in court), it had been served on the respondents within a reasonable time. In *Liew*

Chee Tat's appeal, however, where the notice of appeal had been served on respondents one month and seven days after the last day prescribed for it to be filed in court, his Lordship did not expressly say whether he considered service to have been effected within a reasonable time, but upholding the objection by counsel for the respondents that no notice of appeal having been served on or before the last date for it being filed in court (there being no application by appellants for enlargement of time for such service), dismissed the appeal.

In short, Sharma J. decided that service of the notice of appeal on respondents under O. XXXIX r. 2(6) of the Subordinate Courts Rules should also be effected within 14 days from the day on which decision was pronounced.

With the deepest respect, I would say that the Rules Committee would have prescribed a time for service on all parties affected by the appeal as it had done for filing the notice of appeal in r. 2(3) and for making various payments into court in r. 2(5) had that been the intention and that it would be incorrect to assume that the absence of time for service should be regarded as a defect in the Rules or an error by the Rules Committee.

This seems to be an appropriate instance when section 54(2) of the Interpretation Act, 1967 should be applied. That sub-section reads: —

"Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises."

Service some 25 days after the last day for filing such notice of appeal in court, I consider to be speedy enough in the circumstances. The need for extension of time for such service does not therefore arise.

There shall therefore be no order on the motion.

No order.

Solicitors: *J. Nadchatiram & Co.; Seah Choon Chye.*

RE KHOO KIM HOCK

[O.Bk.J. (Mohamed Azmi J.) April 22, 1974]
[Kuala Lumpur — In Bankruptcy No. 157 of 1973]

Bankruptcy — Adjudication order — Application by undischarged bankrupt for an order to annul — Whether bankrupt has a right to engage a solicitor — 'Property' and 'Chose in action' — Bankruptcy Act, 1967, ss. 38(1)(a), 92(1), 105(1).

This was an application by an undischarged bankrupt for an order annulling the adjudication order under sections 92(1) and 105(1) of the Bankruptcy Act 1967 for reasons that he ought not to have been adjudged a bankrupt as he was not indebted to anyone and that his own petition was filed under a misconception of law and liability towards his alleged creditor. When the application came up for hearing, counsel for the Official Assignee raised a preliminary objection on a point of law contending that having regard to the provisions of the Bankruptcy Act an undischarged bankrupt in this country was disabled not only from maintaining the present application but also from employing an advocate and solicitor unless the prior sanction of the Official Assignee was first obtained. Section 38(1)(a) of the Bankruptcy Act provides:

"Where a bankrupt has not obtained his discharge — the bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Official Assignee."

Held: (1) section 38(1)(a) does not apply to an application under sections 92(1) and 105(1) of the Bankruptcy Act, where a bankrupt is seeking the court's discretion to review, rescind or vary any order made by it, and as such no previous sanction of the Official Assignee is necessary in the present case;

(2) an undischarged bankrupt in this country is entitled to engage an advocate and solicitor to represent him in any action where the provision of section 38(1)(a) does not apply, or where the cause of action does not vest in the Official Assignee.

Cases referred to:-

(1) *K. Ismail Ganey Rowther & Co.* v. *M.A. Abdul Kader* [1933] M.L.J. 98.

(2) *Re Ex parte Reynolds* (1885) 15 Q.B.D. 169.

(3) *Re Elderton Ex parte Russel* (1887) 4 Mon. 36 C.A.

IN BANKRUPTCY.

V. K. Palasuntharam with *V. Manuel* for the applicant.

V. C. George with *David Dass* for the creditor/respondent.

Vincent Das (Senior Assistant Official Assignee) for Official Assignee.

Mohamed Azmi J.: This is an application by Notice of Motion dated November 29, 1973 by an undischarged bankrupt for an order annulling the adjudication order dated May 7, 1973 under sections 92(1) and 105(1) of the Bankruptcy Act, 1967 for reasons that the applicant ought not to have been adjudged a bankrupt as he is not indebted to anyone and that his own petition was filed under a misconception of law and liability towards his alleged creditor, namely, J. Ballas & Co. Pte. Singapore, by reason of duress and mental instability, and for other reliefs. The applicant's own petition came up before Yong J. wherein the applicant declared that he was unable to pay his debts and accordingly receiving and adjudication orders were made against him. From the Official Assignee's Report dated January 1, 1974 the bankrupt filed his state of affairs on May 7, 1973, *i.e.* the very day he was adjudged bankrupt, disclosing a liability of $39,092.50 due to J. Ballas & Company — an unsecured creditor. No assets were disclosed. But the unsecured creditor filed a claim to the extent of $1,263,759.59 against the bankrupt's estate on account of purchase of shares and share transactions with the bankrupt and supported its claim with a statement of account. Summary administration order was made on July 7, 1973. The first creditors Meeting was held on July 19 the same year. Public examination under section 17 was fixed on August 24, 1973 and adjourned to April 10, 1974 for further hearing.

When this application came up for hearing, Mr. Das for the Official Assignee raised a preliminary objection on point of law. Both in his written and oral submissions it is his contention that having regard to the provisions in the Bankruptcy Act 1967, an undischarged bankrupt in this country is disabled not only from maintaining the present application but also from employing an advocate and solicitor unless the prior sanction of the Official Assignee is first obtained. Since